

SUSMAN GODFREY L.L.P.  
A REGISTERED LIMITED LIABILITY PARTNERSHIP  
SUITE 950  
1901 AVENUE OF THE STARS  
LOS ANGELES, CALIFORNIA 90067-8029  
(310) 789-3100  
FAX (310) 789-3150  
WWW.SUSMANGODFREY.COM

ELECTRONICALLY FILED  
DOC#:  
DATE FILED: 1/30/12

SUITE 5100  
1000 LOUISIANA STREET  
HOUSTON, TEXAS 77002-5006  
(713) 651-9360

SUITE 5100  
801 MAIN STREET  
DALLAS, TEXAS 75202-3775  
(214) 754-1900

SUITE 3800  
1201 THIRD AVENUE  
SEATTLE, WASHINGTON 98101-3000  
(206) 510-3850

15TH FLOOR  
580 LEXINGTON AVENUE  
NEW YORK, NEW YORK 10022-6828  
(212) 336-8330

STEVEN G. SKLAVER  
DIRECT DIAL (310) 789-3123

E-MAIL SSKLAVER@SUSMANGODFREY.COM

January 27, 2012

VIA FACSIMILE (212) 805-6326

Hon. Colleen McMahon  
United States Courthouse  
500 Pearl St., Courtroom 14C  
New York, NY 10007-1312

MEMO ENDORSED

Rule 16 Conference  
re-scheduled to 2/17/12  
@ 11:45 am.  
Colleen McMahon  
1/30/12

Re: *Martin Fleisher, as trustee of the Michael Moss Irrevocable Life Insurance Trust II, et al. v. Phoenix Life Ins. Co., Case No. 11 Civ. 8405 (CM)*

Dear Judge McMahon:

Undersigned counsel represents the plaintiffs, individually and on behalf of the putative class, in the above captioned matter, who submit this letter to advise the Court of plaintiffs' position with regards to the Civil Case Management Plan to be addressed at the February 3, 2012 Initial Pretrial Conference.

This is a putative class action brought by owners of life insurance policies issued by defendant Phoenix Life Insurance Company ("Phoenix") who have been subject to allegedly unlawful increases in their cost of insurance ("COI"). One of Phoenix's COI increase at issue in this case has already been declared unlawful by the New York insurance regulator and is the subject of heavy criticism in trade publications. See, e.g. New York Regulator Orders Phoenix to Reverse COI Charges, *The Life Settlements Report*, Dec. 1, 2011 at 2.

Assuming defendant timely complies with its discovery obligations, this litigation can be completed by the deadline already ordered by the Court. Given the New York insurance regulator's investigations, for example, ostensibly, Phoenix has already gathered much of the document discovery required in this case and already knows the issues that lay at the heart of this dispute, namely, the factual basis for why Phoenix increased its COI and whether that basis complies with the terms of its uniform, standardize contracts with putative class members

2145483v1/012746

Hon. Colleen McMahon  
United States Courthouse  
January 27, 2012  
Page 2

and other applicable laws. Accordingly -- and in stark contrast to Phoenix's unnecessarily lengthy and delayed proposal -- plaintiffs' proposed schedule in this case is in *compliance* with the Court's November 23, 2011 Order Scheduling an Initial Pretrial Conference (the "Order"), such that, as the Court has so ordered,

- all discovery is completed within six months of the Order, and
- a proposed joint final-pretrial order is filed within forty-five days of the close of discovery.

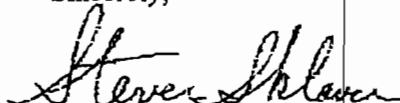
See Order ¶ 2.

Accordingly, plaintiffs' propose the following Civil Case Management Plan (also attached as Exhibit A):

January 23, 2012	–	Discovery pursuant to Fed.R.Civ.P. 26(a) shall be exchanged (already accomplished)
February 24, 2012	–	No additional parties may be joined
March 16, 2012	–	No pleading may be amended, except for good cause shown
May 1, 2012	–	Initial expert reports due
May 14, 2012	–	Rebuttal expert reports due
May 23, 2012	–	All discovery completed
July 6, 2012	–	Propose joint pretrial order due.

Plaintiffs further propose filing their motion for class certification on or before April 16, 2012.

Sincerely,

  
Steven G. Sklaver

cc: Counsel for Phoenix  
Enclosure

2145483v1/012746